

## § 1.367(b)-12

## 26 CFR Ch. I (4-1-03 Edition)

after the effective date described in paragraph (a) of this section.

[T.D. 8862, 65 FR 3608, Jan. 24, 2000]

### § 1.367(b)-12 Subsequent treatment of amounts attributed or included in income.

(a) *In general.* This section applies to distributions with respect to, or a disposition of, stock—

(1) To which, in connection with an exchange occurring before February 23, 2000, an amount has been attributed pursuant to § 7.367(b)-9 or 7.367(b)-10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999); or

(2) In respect of which, before February 23, 2000, an amount has been included in income or added to earnings and profits pursuant to § 7.367(b)-7 or § 7.367(b)-10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999).

(b) *Applicable rules.* See § 7.367(b)-12(b) through (e) of this chapter (as in effect prior to January 11, 2001, see 26 CFR part 1 revised as of April 1, 2000) for purposes of applying paragraph (a) of this section.

(c) *Effective date.* This section applies to distributions or dispositions that occur on or after January 11, 2001.

[T.D. 8937, 66 FR 2257, Jan. 11, 2001]

### § 1.367(d)-1T Transfers of intangible property to foreign corporations (temporary).

(a) *Purpose and scope.* This section provides rules under section 367(d) concerning transfers of intangible property by U.S. persons to foreign corporations pursuant to section 351 or 361. Paragraph (b) of this section specifies the transfers that are subject to section 367(d) and the rules of this section, while paragraph (c) provides rules concerning the consequences of such a transfer. In general, the U.S. transferor will be treated as receiving annual payments contingent on productivity or use of the transferred property, over the useful life of the property (regardless of whether such payments are in fact made by the transferee). Paragraphs (d), (e), and (f) of this section provide rules for cases in which there is a later direct or indirect disposition of the intangible property transferred. In

general, deemed annual license payments will continue if a transfer is made to a related person, while gain must be recognized immediately if the transfer is to an unrelated person. Paragraph (g) of this section provides several special rules, including a rule allowing appropriate adjustments where deemed payments under section 367(d) are not in fact received by the U.S. transferor of the intangible property, and a rule providing for a limited election to treat certain transfers of intangible property as sales at fair market value (in lieu of applying the general useful life-contingent payment rule). In addition, paragraph (g) of this section provides rules coordinating the application of section 367(d) with other relevant Code sections. Paragraph (h) of this section defines the term *related person* for purposes of this section. Finally, paragraph (i) of this section provides the effective date of this section. For rules concerning transfers of intangible property pursuant to section 332, see § 1.367(a)-5T(e). For purposes of determining whether a U.S. person has made a transfer of intangible property that is subject to the rules of section 367(d), the rules of § 1.367(a)-1T(c) shall apply.

(b) *Intangible property subject to section 367(d).* Section 367(d) and the rules of this section shall apply to the transfer of any intangible property, as defined in § 1.367(a)-1T(d)(5)(i). However, section 367(d) and the rules of this section shall not apply to the transfer of foreign goodwill or going concern value, as defined in § 1.367(a)-1T(d)(5)(iii), or to the transfer of intangible property described in § 1.367(a)-5T(b)(2). However, the transfer of those items to a foreign corporation is subject to the rules set forth in § 1.367(a)-6T, and the transfer of intangible property described in § 1.367(a)-5T(b)(2) is subject to the rules set forth in § 1.367(a)-5T. For a special rule relating to the transfer of operating intangibles, as defined in § 1.367(a)-1T(d)(5)(ii), see paragraph (g)(3) of this section. Transfers of intangible property to foreign corporations pursuant to section 351 or 361 are subject to the rules of this section regardless of whether the property is to be used in the United States, in connection with goods to be